EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
CRED INC., *et al.*,	Case No. 20-12836 (JTD)
	(Jointly Administered)
	Courtroom No. 5
	824 North Market Street
	Wilmington, Delaware 19801
Debtors.	Tuesday, July 19, 2022
	3:00 P.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commenced at 3:01 p.m.)

THE COURT: Good afternoon. This is Judge Dorsey. We're on the record in Cred Inc., Case No. 20-12836.

I will go ahead and turn it over to the liquidating trustee to run the agenda.

MR. AZMAN: Good afternoon, Your Honor. Darren Azman from McDermott Will & Emery for the Trust.

The only item on the agenda today is the Trust's motion to approve claim assignment procedures.

Your Honor, there are really only two core issues for you to decide here. One is whether the plan and trust agreement, as approved by the court, authorize the Trust to acquire claims from creditors. Two, whether the Trust proposed assignment here constitutes an impermissible modification of the plan.

Your Honor, on the first issue you can find that the trust has authority in one of two ways. First, does the plain language of the plan or the Trust agreement allow for it, or, stated differently, does it prohibit it. Second, if it's not clear, what was the intent of the parties when they included a provision specifically referencing the acquisition or purchase of third-party claims.

As the Uphold Plaintiffs concede, the plain language of the trust agreement and the plan authorize the Trust to acquire third-party claims. And with respect to

Uphold its worth pointing out the obvious that Uphold is not here to protect creditor interests. Their goal is simple, eliminate as many potential claims as possible that the Trust or creditors might bring against them in whatever form or venue, whether the class action or here in the bankruptcy court. That is their only goal.

I think the court should take that into consideration when weighing their arguments that they are not speaking from their voice as a creditor.

So going back to the legal question, the plan and the trust agreement referenced the Trust's ability to adjudicate third-party claims that the trust has acquired, purchased or that have, otherwise, been assigned. Your Honor, what other claims could we be talking about if not claims that creditors or others have like the Trust is now seeking to acquire. We think the answer is simple, the claims that we are trying to acquire are exactly the claims that the assignment provision references.

Even if there is some level of ambiguity in that provision Your Honor can clarify the meaning consistent with the SS Body Armor case that we cited which stands for the proposition that courts have the ability to clarify a plan where it is silent or ambiguous, or interpret plan provisions for equitable concerns.

Your Honor, just to be clear, this claim

assignment strategy is something that was discussed at great length with the committee on a number of occasions, shortly before confirmation, and those discussions ultimately culminated in adding the assignment provision that is at issue here. That was added to an amended plan in a redline that was filed just prior to the confirmation hearing. You can see the redline where we added the claim assignment provision; it's at Docket No. 388, and it's on page 63 of that PDF.

So it's not as if we suddenly thought of this idea to acquire claims and then happen to go back and find a provision in the plan or the liquidating trust agreement that allowed us to do this. It was deliberated at great length by the committee and subsequently by the liquidation trust. As a result we added it to the plan and the trust agreement.

Now Uphold argues that the assignment provision refers only to claims assigned by the debtor to the trust. Your Honor, why would the committee have insisted on including this assignment provision shortly before the confirmation hearing if the only thing the provision was designed to accomplish was the trust's acquisition of claims from the debtor. When would the debtor or the Trust even have had time to make use of that provision and why would we even need a provision like that when there were many other provisions in the documents that effected the transfer of

claims from the debtor to the Trust.

So, Your Honor, for those reasons we think there is no question that the Trust has the authority to acquire creditor claims here.

Your Honor, the second issue for you to consider is whether the acquisition of claims, as we proposed, is somehow a modification of the confirmed plan. If Your Honor concludes that the Trust has the authority to acquire claims which, again, the Uphold Plaintiffs concede, that should be the end of the inquiry and you don't even need to address the second issue. Any acquisition or purchase of claims by the Trust would necessarily entail and exchange of consideration in some form from the Trust to creditors. What else could have been contemplated when the parties used the word "purchased" in the assignment provision?

Both Uphold and the plaintiffs discuss how certain creditors may not benefit as much as others from the claim acquisition strategy that we are proposing. Your Honor, even if that is true that does not mean there has been a plan modification. In every claim acquisition scenario each creditor will have a different cost benefit analysis; it's only natural. And to suggest that the trust should undertake the work of assigning values to different assigned claims of different creditors in different situations who have different sets of facts is an impossible and really unhelpful

task. And, of course, I think both Uphold and the plaintiffs recognize that because neither of them suggest an alternative way to do this, only that they don't like how the Trust (inaudible).

Your Honor, as you said in Mallinckrodt --

THE COURT: Well let me ask you, Mr. Azman -- the one thing I have a question about is if the intent here from the beginning was that the trust could acquire these third-party claims. And if they were going to do it on a basis where a blanket ten percent bump in an allowed claim for any claimant who agrees to assign their claim why wasn't that included in the plan?

MR. AZMAN: Your Honor, let me clarify the deliberations that the committee had. The goal was to confirm the plan quickly. As Your Honor may recall there were a lot of issues going on in this bankruptcy case from day one. The committee's primary goal was getting to a liquidating trust. We got this plan confirmed in this case in four and a half months which is a very short period of time, as Your Honor probably knows, for any case let alone a case of this complexity.

We did not decide -- the committee did not decide at that time that there was going to be a ten percent bump. We discussed a number of different structures that we could have, but we did not want to acquire claims before we even

had a chance to consider what the ramifications of doing that would be and also what the proposal should be, whether it should be ten percent, five percent, some other type of structure. So we did not know whether or not it would be this structure or some other. What we knew was that the trust needed the ability to later acquire a claim.

THE COURT: Well here is the problem I have, how -- I mean that number just seemed to have been plucked out of the air. How do I know that it actually -- I have no idea what the effect of this is going to be on the estate. Is it going to be net beneficial to the creditors? Is it going to be net negative to the creditors? Is it net neutral?

There is no way for me to know. There is no evidence here. You're just asking me to take your word for the fact that this ten percent bump in a claim is based on a good faith decision by the trustees without any evidence for me to know and to evaluate whether that is a good thing or a bad thing.

MR. AZMAN: Well I think there's a difference between asking Your Honor to decide those two issues that I mentioned before; one in which is does the document allow for it, whether it's the plan or the liquidating trust agreement, and the second issue being whether it's a modification to a plan. I think there is a difference between us asking you to make that determination versus you determining whether this

is an exercise of good faith or good business judgment by the trustees.

If Your Honor is not comfortable blessing the good business judgment of the trustees -- I mean the trustees everyday make business decisions that we don't come to the court for. Somebody can always come back and claim that they did not exercise their good business judgment in doing that.

So if Your Honor has a concern about that latter inquiry, about whether it's in the trustee's best business judgment, or good business judgment, or maximizing value, any of those formulations we would be happy for Your Honor to just bless the fact that this is authorized and it's not a modification of a plan. I don't think that you need discovery to determine whether or not it's authorized or its modification of the plan, but I understand your concern.

THE COURT: I saw in your papers you said you were willing to just forego the ten percent bump issue.

MR. AZMAN: We are. I mean, look, the trustee believes that that would be a bad decision; not a bad decision they're not acquiring claims at all, but it would probably result in less claims being assigned to the Trust which is, obviously, in contrast to what the trustees believe is in the best interest of creditors here.

I don't think that there is any evidence that anybody could put, including the Trust, that would

demonstrate that there will absolutely be a benefit to the Trust in a way that provides equal benefits to all creditors if that is what Your Honor is asking. And we have acknowledged that in our pleadings. There are absolute permutations in which certain creditors may benefit over others, but that is from their own individual circumstances, not from the claims that they have against the Trust. I think that is an important distinction.

THE COURT: Well, you know, I do this all the time in deciding whether a settlement is appropriate or not. Does the settlement rise above the lowest range of reasonableness. And in this case I don't have anything to look to, to say, yes, it rises above the lowest range of reasonableness.

This is, in a sense, a settlement. You're telling a claimant you assign your claim to us we will give you a ten percent bump in your allowed claim. I have no idea -- you know, some claimants get a ten percent bump, that could be a big difference for them. In others it could be miniscule. It depends on what the value of the third-party claims are. That is the other thing I don't know. What are the value of these third-party claims that you are requiring. That is where I'm struggling.

MR. AZMAN: Your Honor, we would be happy to present evidence at an evidentiary hearing on those issues given the concerns you have raised. I hear you on that issue.

It makes sense.

THE COURT: Okay. Go ahead.

MR. AZMAN: So, Your Honor, look, we're not altering the priority of claims established in the plan. We're not altering allowed claim amounts that were specified in the plan. In fact, no allowed claims were promised and we're not offering distributions that were promised in the plan. No distributions were promised in the plan.

The Uphold Plaintiffs cite the NorthEast Gas Generation case as support for their plan modification argument. That case illustrates precisely why there is no plan modification that is happening here. In NorthEast Gas the plan provided a specific amount for the treatment of an impaired class of secured creditors. It was not an estimate. It said exactly what they were supposed to get. Then ten months later the debtor filed a motion to alter that treatment.

Your Honor, we do not have those facts here. Again, the treatment of unsecured creditors under our plan simply said that they would receive their pro rata share of recoveries based on their allowed claim amounts, whatever they may be. The plan said nothing about what allowed claim amounts would be and said nothing about how much would be available for distribution. How can that constitute a modification? What are we modifying?

So at the end of the day, Your Honor, all unsecured creditors are still receiving their pro rata share of recoveries and they all have the option to participate in this claim assignment. Your Honor, we reviewed every single reported case in which a court has addressed any aspect of claim assignments by a bankruptcy trust. We did that work both as the committee's counsel and we did that work again at a deeper level for the Trust in advance of filing the motion. Not one of those cases talks about plan modification.

The closest case we could find to our facts is the Taberna Capital case from the SDMI District Court where the court found no issue with the bankruptcy trust taking assignment of a creditor's claim and then standing in the shoes of the creditor to pursue the litigation. And by the way, that claim assignment in Taberna happened after the plan was confirmed and probably most importantly there was not even any language in the plan that authorized the trust to acquire a claim; nothing that even remotely resembled the language we have in the plan that authorized the trustees to do what we are asking.

I want to quote some language from that case. In discussing the merits of the assigned claim this is what the district court said in general, claims or choses in action may be freely transferred or assigned to others. The Second Circuit has held that a bankruptcy trustee who obtains valid

assignment of claims is not prevented from suing on those claims simply because the assignee is a creature of bankruptcy.

Your Honor, the district court, in its decision, did not talk about plan modification because they didn't need to. Your Honor --

THE COURT: Well, it wasn't raised as an issue in the case either.

MR. AZMAN: That's correct, it wasn't raised in this decision. So, again, Your Honor, we don't think this is a plan modification issue.

Your Honor, I also want to address the Uphold Plaintiffs request that we include certain disclosures in the assignment process. Your Honor, the Trust is not acting in a fiduciary capacity in negotiating to acquire claims from creditors. Yes, we owe fiduciary duties to creditors in their capacities as trust beneficiaries, but not in their capacity a third-party that may assign their claim, their direct claim to the trust.

What I mean by that is that the Trust has a responsibility to maximize recoveries for the trust and all of its constituents. What we do not have is a responsibility to maximize an individual creditors overall recovery from sources other than the Trust which is by participating in the Uphold class action or suing anyone else directly. In fact,

Your Honor, we previously litigated that issue before you to prevent a creditor from suing third parties on what we allege are estate causes of action.

Your Honor, the trust has a narrow mandate and it is maximizing value for the trust. We have no obligation to give creditors a reason for why they should reconsider their decision to assign claims to the trust. We have no obligation to talk about the benefits and downsides of assigning their claims to the Trust. This is no different, for example, then if we were attempting to settle a preference action with a creditor who also has a claim against the debtor. Those preference defendants have every right to hire counsel, they have the right to think about their preference claim selfishly in their own right and they have the right to make a decision about what is best for them.

Similarly, the Trust has the right and, in fact, the obligation to do everything that we can to maximize value for the trust which includes not offering up reasons for why we think creditors might want to reject our claim acquisition offer. Your Honor, this request is nothing more than the Uphold Plaintiffs trying to maximize value for their own constituency without regard to how it will impact distributions by the Trust to all creditors. To be clear, Your Honor, the classes, the putative class constituency is

narrow. It includes only individuals who are based in the US, who were referred by Uphold to Cred.

So, Your Honor, for those reasons, if you do approve our motion, the Trust should be free to pitch the claim acquisition process to creditors on an arm's length basis as the trustees think it appropriate and in a manner that benefits the Trust.

Your Honor, the last issue I want to address the Uphold Plaintiffs make a few jurisdictional and venue objections. No one is asking Your Honor today to determine whether the trust can or cannot bring an action on the assigned claims of the bankruptcy court or any other forum. In fact, the only immediate impact of the assignment is that Trust will stand in the shoes of creditors in a punitive class and another litigation that the creditors would, otherwise, have standing to bring over or participate in. We don't know what the Trust will do with those claims and we're not asking Your Honor to bless anything that we may do as holders of those claims in the future.

Thank you.

THE COURT: Thank you, Mr. Azman.

Who is going first on the objectors or -- well, let me -- Ms. Sarkessian, you are on, do you have a position one way or the other?

MS. SARKESSIAN: Yes, Your Honor. Juliet

Sarkessian on behalf of the U.S. Trustee.

Your Honor, the U.S. Trustee did not file a response to this motion; however, we do have a few comments we would like to provide. Would you like me to do that now or would you prefer me to wait until the objectors give their argument?

THE COURT: Let's wait for the objectors and I will come back to you. Thank you.

MS. SARKESSIAN: Thank you.

Who wants to jump in?

MR. DELANEY: Good afternoon, Your Honor. This is Michael Delaney with Baker & Hostetler on behalf of Uphold HQ, Inc.

THE COURT: Okay.

MR. DELANEY: Your Honor, I think we would like to just kind of respond in turn to a lot of the assertions that were made by the trustee's counsel today and in their pleadings and in the reply. You know, I think our papers are pretty clear with respect to our position, but as the court, I'm sure, is aware new arguments were raised in the reply brief that we have not had a chance to fully brief.

Before I do that, you know, I think from our perspective we believe that the trustee is losing sight of the purpose of this liquidation trust. This liquidation trust was vested with the authority to accept the assets of

the estate and liquidate those assets for the benefit of beneficiaries of the trust.

The plan, we believe, is very clear on what the assets of the estate are. We believe the plan is very clear about what the liquidation trust assets are. These are terms that are defined thoroughly in the plan. It was a plan that was, as trustee's counsel stated, heavily negotiated. It makes clear in each one of the definitions that the assets of the liquidation trust are and are intended to be the assets of the debtors and the estates.

We believe that that is important. We believe that that was the premise upon which this plan was proposed. We believe it is the premise upon which this plan was sent to creditors. It was voted upon. It was confirmed. And we believe that the motion that is before the court is not some innocuous motion to establish procedures under existing authority. It is a motion to grant authority that was not provided for in the trust agreement or the plan, not under the, you know, "adjudication clause" as referenced by the trustee.

And we do not believe that it is properly considered to be part of any sort of settlement or other compromise especially this time given the lack of any evidence regarding what claims are purportedly being resolved, what those claims are worthy, what the assets are

that the estate is receiving vis-à-vis third-party claims, what the value of those third-party claims are, what the likelihood of success is, what the likelihood of collections are. You know, I could go on and on about the dearth of evidence that we're really looking at when we're talking about the motion that was brought by the liquidation trustee.

THE COURT: Well on the question of whether or not the Trust can acquire third-party assets is it your position that if a claimant came to the trustee and said, hey, I've got a claim against the estate, I've also got a claim against this third-party, but I can't afford to prosecute that claim and I'm willing to give it to you so that you can pursue that claim for the benefit of any creditor of the estate. Are you telling me they can't do that?

MR. DELANEY: Your Honor, I think in general, they might have the ability to do that and I think that is what the case is citing by the liquidating trustee said, but I don't believe under the plan that is confirmed they are authorized to do that. I think we keep talking -- you know, the liquidating trustee keeps talking about this adjudicate clause.

If you look at the adjudicate clause and you read it in tandem with the preface of the provision, so we're talking Section 2.4 of the liquidation trust agreement, it says that all of the enumerated authorities must be necessary

to the purposes of the liquidation trustee -- the liquidation trust, excuse me, Your Honor.

The purpose of the liquidation trust is not to go off and buy third-party claims. It is not even, as stated in the liquidation trust agreement, to maximize value to the creditors. The purpose of the liquidation trust is to take, hold, liquidate and distribute the "liquidation trust assets." The liquidation trust assets, in turn, have a very finite definition; it is those assets of the debtors and the estate.

THE COURT: So if there are valuable third-party claims out there that nobody is going to be able to pursue because they can't afford too, and the trustee has an opportunity to acquire those claims and pursue them for the benefit of every creditor of the estate, you're telling me they can't do it.

MR. DELANEY: What we're saying is we don't believe that the plan authorizes them to do so in this case. Had they done, say for instance, what they did in Woodbridge or that they had an actual provision in the plan that said we have the right to acquire.

The adjudication clause does not say that the liquidation trust has the right to acquire it. It doesn't even say third-party claims acquired by the liquidation trust. That is just how the liquidation trustees are

presenting that provision. The provision is -- furthermore, I think our position is that the ability to adjudicate does not necessitate the ability to acquire. The ability to adjudicate third-party claims could be easily read, and we believe rightfully so, to clarify that a liquidation trust has the ability to adjudicate third-party claims that were transferred to them as part of the liquidation trust assets.

If we read into that provision that it's just any claim that the liquidation trust is often acquired we believe that runs afoul of the limitation in the preparatory statement. We also believe that it expands the definition of liquidation trust assets. You know, so I think that is why we believe that in this plan, in this circumstance, under the provisions of this liquidation trust agreement that the liquidation trustees do not have that authority, Your Honor.

THE COURT: So if I were to say that it was unclear, there is some ambiguity, what is your position on the -- the trustee's position regarding SS Armor that would allow me to clarify that and say, yes, they can because that's clearly what was intended; it just didn't make it into the plan or the trust agreement.

MR. DELANEY: Your Honor, I think that our position would be that that would be inferring a right, not really interpreting the provision. It would be an expansion of the right. If the liquidating trustee said that this was

envisioned since the time the committee was involved in the case, but that the provision was not made clear because, you know, they didn't have enough time to do it, Your Honor, I don't believe that that is really a grounds upon which they can rely to say that they didn't put the word "acquire" in the plan.

We're not talking about drafting a long provision. They could have simply put in the plan specifically stating that the liquidation trust has the right to acquire third-party claims pursuant to procedures, you know, for post-confirmation or, you know, confirmed by this court. All they had to do was use the word "acquire" and the liquidation trustee wants to read "acquire" into adjudicate.

Adjudicate may be interpreted in a lot of ways, but we do not believe that it is fairly interpreted as granting the authority to acquire third-party claims especially when read in context with the overall purpose of the plan, the definition of assets, the liquidation trust assets, the causes of action. All of these things have specific needs and we do not believe that reading non-debtor third-party claims against non-debtor parties fits within that definition.

We're not saying that the liquidation trustee doesn't have the ability to receive assignment of claims that were assets of the debtor. We're not saying that. We're not

saying that they don't have the authority to go up and prosecute those claims. I mean if we were to be taking depositions it would be contravening all of the Delaware authority on this point and each of those cases involved the grant and the assignment of third-party claims as part of the plan confirmation process.

Your Honor, that could have been done here. It wasn't and the plan was confirmed. The plan is substantially consummated. It's been substantially consummated for 15 months as of today. And yet we believe that the liquidation trust is trying to expand the -- is trying to expand its authority and the assets of the liquidation trust by and through this motion.

Your Honor, that is not the only issue we see here. Obviously, we believe there is a lot of issues with respect to this motion. We believe that it does modify the treatment of Class 4 creditors. I think it's a strange reason to say that increasing by ten percent across the board any claims of assigning creditors does not affect the interest of the non-assigning creditors. I think any cursory review of the plan will show that there is never any mention of increasing claims in Class 4 in consideration for assignment of the claims. The ten percent was never mentioned.

We believe that that would be a modification of

the plan to now say that assigning creditors are able to get an increased ten percent. We believe that that would violate the pro rata nature of the distribution. The pro rata nature of these distributions is we don't believe envisions and no creditor could reasonably envision that the liquidation trustee would, across the board, increase claims by ten percent in some unknown amount. We have no idea what that amount would be. We have no idea what the implications would be for creditors in Class 4. There has been no disclosure. So we believe that that would be a material modification of the plan that would be prohibited.

To one other point on the ten percent modification the liquidation trustee, in its reply brief and today before the court, has made several statements that all parties would be able to equally participate. There is nothing on the record to suggest that all parties in Class 4 hold third-party claims that are assignable to the liquidation trust. And there is no reason to conclude that trade creditors would have third-party claims against any number of whoever the liquidation trust might be intending to go in two.

We have no reasonable basis to conclude that the liquidation trust or Class 4 would be able to equally participate in these assignments. So we believe that that is somewhat of a red herring. We also believe that that is why the argument presented by the liquidation trust under

1122 and 1123 fails as well. You know, we don't believe that this class, as proposed, as modified by the assignment procedures, would be able to stand under 1122 and 1123.

We believe it does provide for disparate treatment of similarly situated creditors on a basis other than the nature of their claim. The disparate treatment is premised upon the fact that some creditors have third-party claims and some don't. That is on a valid basis to provide for disparate treatment.

I apologize, Your Honor, I'm jumping around in my notes a little bit.

Your Honor, I think two more points that I would like to make. One, I think that there is a question about the benefits of third-party creditors -- sorry, not third-party creditors, the Class 4 creditors. The trustee has taken the position that any proceeds from these third-party claims would be distributed to beneficiaries of the trust. I think that, you know, if that is what is approved, if the court approves the procedures and approves the acquisition of third-party claims that probably should be what happened. We don't disagree with that.

We do think that that would require modification of the treatment of Class 4 creditors. That is really impermissible at this point in time. Under the plan Class 4 creditors are entitled to receive net distributable assets,

the pro rata share of net distributable assets. Net distributable assets are defined as the assets of the debtors -- the proceeds from the liquidation of the assets of the debtor. As these are not -- as third-party claims are not assets of the debtor under the plan, I think that we would say that that is yet another modification that would have to occur under the plan, really not to approve the procedures themselves, but to really implement them and to give meaning and purpose to the procedures.

The last point pertains to the potential tax implications. I think we do have some serious concerns about whether or not the trustee would be engaged in some sort of business that would affect the tax treatment of the liquidation trust under the tax code. A liquidating trust under the tax code is, you know, a trust that is formed for the purposes of liquidating the assets assigned to it.

You know, based on the decisions that we have reviewed we believe that that is, you know, intended to reflect assets assigned to the liquidation trust by the debtor entity to establish in connection with the plan. I think our concern is that if there are an unknown number of additional assignments of assets from non-debtor entities these third-party creditors of the liquidation trust that that could affect the taxes in the liquidation trust which could have significant negative tax implications for the

beneficiaries of the trust and the trust as well.

I think we are concerned about that. I think that they're showing that the liquidating trust should be able to make with respect to those issues. They may disagree with our read, but, you know, when we're looking at the brief I haven't seen anything that shows an opinion saying that doing this will not affect their tax treatment.

So I think that is our concern and we think that given the fact that there really is no proof of benefit to the estate at this point in time that approving this without some sort of demonstration that it won't affect the tax treatment of the Trust should not be considered.

I think with that, Your Honor, I would answer any further questions that you might have. If not I will turn over the podium.

MR. NEIGER: Good afternoon, Your Honor. May I proceed?

THE COURT: Yes, go ahead.

MR. NEIGER: Good afternoon, Your Honor.

My name is Edward Neiger. I represent the proposed class plaintiffs in the Sandoval v Uphold class action or proposed class action. With me is my partner Jay Reding out in Minnesota and my co-counsel, Rachel Geman, from the law firm of Lieff Cabraser Heiman & Bernstein, with my co-counsel, as an objector, and his proposed class counsel in

the proposed class litigation.

Your Honor, I'm going to make my arguments as though there still is a 10 percent bump, because although Your Honor asked some difficult questions and seemed to be bothered by it, Your Honor has now stated that you will not approve the 10 percent bump, so I'm going to proceed as if that's still on the table.

But I want to make something very clear right off the top. Even if the trustee moves the 10 percent bump, we still see the proposed procedures as being highly problematic, especially from a notice perspective and from a due process perspective.

So, let me get into the arguments that I was going to make, which may be somewhat modified based on comments that the Court has made and comments that counsel to the trust has made. We firmly believe that this is a plan modification and I'll get into why we believe it's a plan modification and not a claims resolution. As such, you just can't modify it. It's barred by 1127(b) for two reasons. Number one, the trust is not a plan proponent, but number two, the plan was substantially consummated, which everyone -- there's no dispute about.

But even if this can be modified under Section 1127(b), because the plan was not substantially consummated but somehow the trust is a plan proponent, we

still need to comply with Section 1125 of acts under 1127(c) and 1123(a)(4) and that's under 1127(b). And I'll be perfectly honest, I was shocked -- shocked when I heard counsel to the trust say that this language that they're using to show that they have authority to acquire claims, and, you know, I could go both ways on that. I think you need to be a cum laude scholar to really read between the lines to see that the trust intends to acquire claims, but assuming that's there, assuming that language is there and that language is clear, that was put in, at least according to -- if I heard trust counsel -- counsel to the trust correctly -- I mean, you can correct me if I'm wrong -- that was put in right before the confirmation hearing. So, I doubt that general unsecured creditors got notice of that and if they did, I would like more information about that and how they got notice and when they got notice, et cetera, et cetera.

Because this entire thing turns on that insertion and even if the plan went out and the disclosure statement went out to everyone, that a provision probably did not. And as Your Honor knows under the local rules, notice must go to everyone who's going to be affected by what a motion is trying to do. And in this case, there are two classes of people who will be affected by the motion. There are the Cred creditors who will be affected by the motion,

essentially if they don't assign their claim because they're going to get what the opposite of a bump is, whatever that is; it's a cut. And there are the Uphold creditors, frankly, many of whom are also Cred creditors, so they should be getting it as a Cred creditor, but from a due process standpoint, the Uphold creditors are going to assign their claim to a trust and instead of getting recovery on their claims, their recovery is going to be distributed to everyone else, whether -- it's impossible to know how that will help, but in most cases, I have to think it will hurt.

And for them to not get notice of this, and not only notice, but notice that is acceptable under Section 1125, which Section 1127(c) requires, that just did not happen in this case, so I think that's highly problematic and very troubling, to be honest.

I also think that we have 1123(a)(4) problems, which I'll get into, but first I want to just give the basics of why this is a plan modification and not as the trust counsel said, it's part of a claims-resolution process, because I think that, if the Court agrees with that, I think that will also create a lot of problems, not only in this case, but, frankly, in many other bankruptcy cases. It will open the floodgates to all sorts of post-bankruptcy machinations being done under the guise of claims resolution.

Everybody on this Zoom knows what claims

resolution is. You know it as a first-year bankruptcy lawyer, because that's what you do as a first-year bankruptcy lawyer, you do claims objections and claims resolutions. You object to a claim. Usually, the basis is it doesn't match the debtor's books and records or if it's a trade creditor, they -- the goods weren't good, and then they resolve the claim. That's what claims resolution is.

This is an unprecedented sleight of hand to say that what the trust wants to do with these complex procedures that have implications that the trust admits, itself, doesn't know what those implications are. So, to say that those are claims modifications, just doesn't pass the smell test. It doesn't hold water. Whatever expression this Court wants to use.

But I'll go a step further and say that even if the notices were perfect, which they clearly weren't, and I doubt that unsecured creditors got notice of any of this, but even if the notices were perfect, in cases cited -- in most of the cases cited by the trust, one of two things were present. Number one, it truly applied to the whole class. There wasn't a segment of a class to which it couldn't apply.

And over here there is a segment of a class, of the class to which it, by definition, will not apply; for example, trade creditors or people who have (indiscernible), people who don't have third-party claims against Uphold for

whatever reason. I'm not the expert in the Uphold litigation. I'm just the bankruptcy lawyer. But there are definitely people who have claims against Cred who do not have claims against Uphold and they are in this class.

And the trust has failed to cite a single case where this was approved over the objections and the basis for the objection was 1123(a)(4), that it didn't apply to the whole class. In Mallinckrodt, it applied to the whole class. In Woodbridge, it applied to the whole class. So, it would be truly without precedent.

Even if the notice was good to approve the procedures, because it, by definition, can't apply to the whole class unless they're willing to state on the record, someone is willing to provide evidence that every single person who is in this class was a creditor of Cred is also a creditor Uphold, which I doubt anyone would raise their right hand and swear to.

The other important distinction -- this does relate to the 10 percent bump, so Your Honor can do what you want with it -- but in the cases cited by the trust, it didn't come -- the compensation, or the "bump," didn't come out of the height of the other creditors in the class, except for Woodbridge. I'll admit Woodbridge is a little bit different. Number one, Woodbridge happened at the time of the plan -- there wasn't this post-plan motion. Number two,

it applied to the whole class. And number three, it wasn't contested in Woodbridge. I don't know why it wasn't contested or what the story with Woodbridge was and, frankly, I don't know what the judge -- I don't think the judge would have approved it if it was contested. But this is bankruptcy court and in bankruptcy, if everyone agrees to something, sometimes judges approve it. But that can't be precedent for future cases.

So, I think if Your Honor approves the procedures, even assuming the notices were good, which they weren't, and even assuming there's no 10 percent bump, it would be unprecedented in four ways and, frankly, it would open the Pandora's box in all cases for people to come in and say, It's not a plan modification, it's a claims resolution, and they'll do all sorts of things then. It will be pandemonium.

So, it's unprecedented in four ways, and then I'm pretty much sure I'm done. First -- and they mentioned the Taberna case. But other than the Taberna case, and I need to look into that, but to my knowledge, other than that case the Court allowed, clearly, the assignment procedures under the plan, even if they took place post-confirmation. It was all part of the plan confirmation hearing and, presumably, everyone got notice under the plan and disclosure statement.

Second, it will be the first time that a court-approved these types of procedures in a post-confirmation

world where not every class member had the same opportunity. And over here, as I said, not every class member had the same opportunity.

Third, it will be the first time these procedures were approved in similar circumstances when they were contested. The closest thing they have is Woodbridge and even in that case, you know, notice went out to everyone and it was part of a plan and it applied to the whole class, but again, that case was not contested.

And, again, the fourth reason this would be unprecedented at this time in this case is the fact that people really didn't get notice of it. And we just need to use common sense for a little. Let's forget about the technical interpretations of what the plan says or doesn't on adjudicate and acquire or purchase. Let's just forget about that. Let's just think of, you know, John Smith sitting on his couch invested $5,000 in Cred and assume this was in the plan originally and wasn't inserted, as trust's counsel said the day before.

Well, let's say it was in the plan and disclosure statement all along and he sits down to read this plan and disclosure statement, which they probably don't do, but that's their problem; that's not the trust's problem. But let's say he reads it. I don't think he can see the consequences of, you know, him assigning his claim and then

it getting diluted to everyone. I mean, that has to be clear. He doesn't know that, and as we said, he probably didn't even get that notice.

So, common sense, due process, just basic, basic concepts that every law student knows should dictate that even if Your Honor removes the 10 percent bump, which I think Your Honor should, people need to get notice of what's going on -- counterclaims are implicated -- so that they can make an informed decision. Should I assign my claim? Should I let my claim -- just whatever happens, happens. Should I be part of the class action, which they're automatically part of the class action. Should I hire my own lawyer to fight the claim? They have a right to know, Your Honor, under basic laws of decency, frankly.

I'm just going through the rest of my notes to see if there's anything I'm forgetting. Please bear with me.

(Pause)

MR. NEIGER: That seems to be the basic crux of my argument. I can go on, but I think I've said enough and I think my points are clear, and if not, I'm happy to answer any questions that Your Honor has.

Thank you for giving me the opportunity.

THE COURT: Thank you, Mr. Neiger.

Ms. Sarkessian?

MS. GEMAN: Your Honor, may I be heard?

THE COURT: Do we -- go ahead, Ms. Geman.

MS. GEMAN: Thank you, Your Honor.

Just a very brief point. To put a finer point on some of this discussion from a class action perspective, to echo what Mr. Neiger implied, our position is that absent class members in the Sandoval v Uphold consumer class action are entitled under various threads of authority, some arising from Rule 23, some from basic due process principles, to information that implicates their participation in -- you know, that could implicate their rights as absent class members in a class action.

So, where as Mr. Azman noted his view on what he was sort of permitted or not required to say to provide to creditors, if you look through the other perspective, these absent class members are entitled to this information about potential implications of assigning their claims against Uphold. And our view, respectfully, is that nothing about this bankruptcy context changes that sort of black letter principle of class-action litigation; if anything, it only underscores it because the same due process principles apply so strongly here.

Whereas, as we noted in the papers, we, of course, recognize this is not a Rule 23 preparing before Your Honor, we suggest that the authority we cited could guide this Court, particularly, because as seems to be clear, this is a

very unprecedented situation. Certainly, it's unprecedented in such a proposal against the backdrop of an extant class action.

Taberna did not involve a class action. The other cases do not involve class actions.

So, simply put, we are seeking to protect absent class members, to whom we owe duties. Thank you, Your Honor.

THE COURT: Thank you.

All right. Ms. Sarkessian?

MS. SARKESSIAN: Thank you, Your Honor.

For the record, Juliet Sarkessian on behalf of the U.S. Trustee. Your Honor, I appreciate the opportunity to be able to make some comments, even though we did not file an objection.

And just to let Your Honor know, I have previously communicated with trust counsel to let them know that we have these concerns and we would be making these statements, so they're not being blindsided here.

So, there are a number of concerns that the U.S. Trustee has. The first is that it's my understanding based in communications with the trust counsel, that there are going to be professional fees that the trust will, you know, have to pursue these -- any third-party claims that are assigned to the trust. And this is not going to be like a pure contingency; there will actually be out-of-pocket

professional fees. And because of that, there could absolutely be a situation in which the trust beneficiaries could actually receive less of a distribution.

Whether they assign their claim or not, they could actually receive less of a distribution than they would if these claims were not assigned. That all depends on, as Your Honor said, you know, what are these claims worth? What will it cost to litigate them? And other information that is just not part of the record at this time.

But, I think importantly -- and somebody can correct me if I'm wrong -- but it's my understanding that the disclosure statement did not disclose that Class 4, the general unsecured creditors, could actually -- there could be situations in which they could receive less if claims were assigned and prosecuted by the trust. They could receive less. They could receive more. They could receive the same. These are all possibilities, but to my understanding, this was not disclosed.

I think, secondly, if Your Honor was to approve some type of procedure whereby Class 4 could assign, or members of Class 4 could assign their claims to the trust, there would have to be a very significant disclosure, I think, frankly, to the level of what would be expected in a disclosure statement regarding all the issues that come up with this. Whether they're getting a 10 percent bump or not,

what does that number come from? What are the risks and benefits to assigning? What are the other alternatives? And there's quite a lot of disclosure that would have to be made and that is something that the U.S. Trustee believes would really need to be vetted with the Court.

Thirdly, and this is actually something that I looked up during the argument, because I heard somebody say, you know, the assets here that are supposed to be distributed to the Class 4 is a *pro rata* share of net-distributable assets. Those are assets of the debtors.

And I pulled up my plan and disclosure statement and based on my quick review, I believe that's right. The definition of net-distributable assets, which is in Section 1.94 of the plan and disclosure statement, is based on the definition of assets, capital A, and then there's certain carve-outs. If you look at the definition of assets, capital A, under -- I (indiscernible) the section -- but in the plan and disclosure statement, it is defined as assets of the debtor and of the estates.

Now, maybe the trust can tell me maybe there's something in that definition that, you know, is not clear and could potentially include other assets. But the third-party claims that we're talking about are not assets of the estate. I think everybody agrees on that. So, I think there's an issue, because the plan treatment only includes a

distribution on the assets of the estate.

And, finally, Your Honor, I want to echo the concern of notice. Under Local Rule 2002-1(b), all motions must be served on, quote, all parties whose rights are affected by the motion, closed quote.

In this instance, it would be all of the creditors who are beneficiaries of the trust. And based on my communications with trust counsel, they were not all served. Only the standard 2002 list were served with this motion. So, there's a lot of creditors out there whose rights are affected by this motion, that have no notice of it and at this point, if Your Honor was to approve it, they would be finding out about it as a *fait accompli* when they get some type of notice, indicating that they have a right to assign their claims without ever having the ability to say, you know, we object to this process.

So, those are the concerns that the U.S. Trustee has, Your Honor, and I'd be happy to answer any questions.

THE COURT: No questions. Thank you very much. I appreciate it.

MS. GEMAN: Thank you, Your Honor.

MR. AZMAN: Your Honor, I have a few responses, if it's okay?

THE COURT: Go ahead.

MR. AZMAN: First, Your Honor, you heard

Mr. Delaney agree with you when you first asked him whether a trust had the ability to acquire claims and then he said that, actually, they can. And I think his focus is on the language in the plan.

First, as you know, we disagree with their interpretation, but moreover, there's no provision that said we cannot do it. And I think it's just as important, Your Honor, our position is that the liquidation trust has the authority to acquire claims, compromise the claims, but we went one step further to make that clear in both, the plan and the trust agreement.

Your Honor, we did not develop a perfect process here -- we acknowledge that -- but that's not the standard for comprising compromising claims and there's no perfect process that we could have come up with because we went through that machination and we couldn't do it.

At bottom, what we're really arguing about here is Uphold and the Uphold Plaintiffs trying to substitute their business judgment for that of the trust for their own benefit and for their own constituents' benefit, and that's it. And, again, as I said before, if Your Honor thinks it will be helpful to complete the record so that you can make a ruling on this, we're happy to submit evidence that satisfies that standard. I have no question that we will be able to do that.

Now, Mr. Neiger said he was shocked by the timing of our inclusion of the assignment provision in the plan and the trust agreement. I'm a bit confused because in Mr. Neiger's objection, he concedes the trust has authority to acquire claims. With that concession, how is the trust's acquisition of claims now a modification of the plan?

I really don't understand that sudden change in position. And for what it's worth, Your Honor, I did look back during argument. The amendment that we made to the plan that added this provision was filed on January 21st and the confirmation hearing was on March 11. So, I apologize if I made it sound as if it was shortly or directly before the hearing. I think Mr. Neiger said the day before. I don't think I said that, but it was well in advance of the hearing where are creditors had notice to review that provision and object if they had an issue with it.

Now, Mr. Neiger also said that this is not a claims resolution or a compromise of claims. I think Your Honor addressed that issue in response to Mr. Delaney's presentation. What if it's part of a preference claim that the trust alleged against a creditor, the creditor agrees to assign its claim against the trust or -- excuse me -- its claim to the trust, and that claim that he agrees -- he or she agrees to assign to the trust is a claim that's part of the Uphold action, that's now a modification of the plan such

that I can't include the claim assignment as part of the trust preference settlement? That can't be right.

Mr. Neiger also said that our assignment process will not include certain creditors and give all creditors the same opportunity. First, Your Honor, the objecting parties continue to ignore the fact that these assignment procedures are not directed at Uphold solely. They're not.

Now, they're the only ones who objected and have an issue with it, but we intend to acquire all claims that creditors have against all parties related to Cred. That is a broad assignment that we are trying to effectuate here and that's the one that's been used in other cases like Woodbridge, so I don't agree with Mr. Neiger's position on that. The claim assignment applies to all creditors. They all have the ability to opt-in and collect 10 percent increase to their claim in exchange for assigning all claims that they have.

Now, did we interview every single creditor to find out what precise claim that they have and what their unique facts are? No. But, Your Honor, it still applies to the whole class.

THE COURT: Well, how are you going to do that, then? How are you going to -- are you going to send out a mass notice to all creditors to say, Hey, if you have a third-party claim, assign it to us. We'll give you a 10

percent --

MR. AZMAN: Yes.

THE COURT: -- bump in your allowed claim and we'll go forward from there.

So, that's what your plan is? How is the trust going to know whether they actually do have a third-party claim or not?

And if you're an individual creditor who's getting this notice, you're unrepresented by counsel and it says, Hey, if you give us -- if you assign to us any third-party claims you have -- we don't know whether you have any or not -- but you assign them to us and we'll give you a 10 percent bump in your allowed claim, how is that comport with the idea -- and I'm going back to Mr. Neiger's point -- of due process and how does it benefit the estate if you're taking -- you're taking in all -- you're going to be contacting unsophisticated people and saying, We'll give you -- you know, some will be sophisticated and some won't be -- but you're saying, Assign to us any third-party claims. We don't know if you have any or not, but you assign it to us. If you do have one, we'll pursue it and in return for that, we're going to give you a 10 percent increase, but we have no idea whether you actually have a third-party claim or not.

That's a --

MR. AZMAN: Your Honor, my answer --

THE COURT: -- difficult position you're putting me in to say, That's sufficient notice to these individual creditors.

MR. AZMAN: Well, I -- first of all, in terms of notice, everyone got notice of the plan and disclosure statement and they both had the --

THE COURT: Nothing in that plan said you were going to acquire the claims and give a 10 percent bump to people who assigned them to you. Nothing said that.

MR. AZMAN: Well, let's talk about other things that aren't expressly disclosed in plan and disclosure statements. So, compromising claims in the sense of objecting to an allowed claim, right. The trust obviously has the ability to object to an allowed claim. Did we go one step beyond? Does anybody ever go one step beyond that and say, for example, that we might choose not to object to a claim because it would cost more money for the trust to object to that claim than it would in terms of benefitting the trust. That's not something we disclose specifically, either. There's a lot of permutations of outcome by trust that we don't disclose in disclosure statements because it cannot be foreseen.

And, similarly, here, like I said before, the trust, and rather the committee and its predecessor, did not

investigate these claims and could not have presented anything. And that's the one thing that I haven't heard from anybody is, what could we have disclosed beyond this to creditors if all we knew was that we wanted to acquire the claims, but that we hadn't fully investigated them yet, and depending on that investigation, that would dictate what the acquisition structure would look like. That's the problem that I have.

THE COURT: Well, the difference between the example you just gave me is, in that situation, everybody is going to be treated equally. Everybody knows you can either accept the claim or contest the claim. You can settle a claim. And whatever the outcome of that is, it's going to affect everybody equally, because you're still going to have whatever the claims are and they're going to be distributed on a *pro rata* basis.

There are people, apparently, in this group who may have claims, third-party claims, who may not have third-party claims. And those who did not have third-party claims, for example, trade creditors, as Mr. Neiger said, those folks, if they had known this was going to be the plan as to how the trustee was going to pursue its obligations under the trust, it affects them differently than it does those who have a claim. They're not being treated the same; they're being treated differently because they don't have a claim.

They don't have the opportunity to get the 10 percent bump, so they're going to be diluted while the others going to go up. And if it had been part of the plan, they might have come in and objected if they knew.

MR. AZMAN: Maybe they'll be diluted. Maybe they'll be diluted.

THE COURT: And that's all completely speculative. I have no idea how this would play out.

But that should be something that is decided by those who are going to be affected by it, not by me. If you're going to say something that's completely speculative -- we don't know how this is going to play out, but we want to try it out and see if it's going to work -- it should be in the plan so people can vote on it. I can't come in afterwards, and you're asking me to completely speculate about how this may help. It may hurt those people. I don't know. But you're asking me to just say, I didn't include it in a plan, but, Judge, you should approve it because we think it might help the plan, it might help these folks, but we don't know for sure.

That seems, fundamentally, unfair to me.

MR. AZMAN: Well, Your Honor, you obviously know that I disagree with that view of it, but I don't know what else we could have put in the plan. I really don't. I don't know how we could have articulated, without any knowledge --

THE COURT: They did it in Woodbridge. They did it in Woodbridge. They put in a 5 percent bump. Everybody knew about it. Nobody objected.

You could have done the same thing. You could have put in a 10 percent bump.

MR. AZMAN: I mean --

THE COURT: You could have said, We're going to give a bump. We don't know what it's going to be yet. It might have an effect on your claim, but this is what we plan on doing, kept it generic. If nobody objected, that's a different story.

MR. AZMAN: Well, two things. One, Woodbridge was a Ponzi scheme and we don't have those facts here. The potential claims and cost-benefit analysis is much more complicated here when we're talking about multiple bad actors that we're pursuing in terms of assigned claims.

But I still come back to the disclosure that was given of the trust's ability to acquire claims. What else is needed, and by the way, if there is more needed, what was the purpose of that provision and how does it help the trust at all, given the position that we're now in?

We cannot make use of that provision if we were required, before the plan confirmation hearing to disclose all the details of whatever the acquisition process would be. There was a provision in the plan that very clearly

(indiscernible) for creditors, we would be acquiring claims and we would be adjudicating claims.

What naturally flows through adjudicating claims if you have a fire?

THE COURT: Well, it's debatable whether it's clear -- it's debatable whether it's clear because the word "acquire" does not appear in the plan or the trust documents.

MR. AZMAN: That's fair, Your Honor. I that's fair, Your Honor. I agree. If I could go back in time and add one more sentence, I would have. I'll acknowledge that on the record. But let's be real, that is exactly what we were talking about.

And we looked back, by the way, at the minutes that the committee kept. And we had at least two sessions of committee meetings where this was talked about and we talked about adding it to the plan for this reason. And, again, we're happy to put that in the record, but I didn't think it was necessary.

But I don't know what other language we could have put in the plan that would have altered the outcome here, other than language that said we were going to acquire claims. Every potential outcome from the trust acquiring claims is going to have a different cost-benefit analysis for every customer, for every creditor here. That would have been true before the plan confirmation and it would have been

true now.

And why would we have that language in the plan if we can't even use it?

THE COURT: Well, you can use it in this sense. You can use it in the scenario you gave me where you're trying to compromise a claim, a preference action you have against somebody and they say, Hey, I've got a third-party claim against somebody else. I'll give it to you in return for your forgiving my preference and you say, Okay. Now, you've bought that claim --

MR. AZMAN: Oh, I --

THE COURT: -- and then you can pursue that claim, and I have no problem with that.

MR. AZMAN: So, I actually (indiscernible) --

THE COURT: But the question of sending out a blanket notice to all creditors, many of whom are going to be unrepresented by counsel, to say, Give us your third-party claims, even though we don't know if you have one, of course they're all going to say yes, right, because they don't know what the implications are, that just doesn't fly for me, I'm sorry. It doesn't fly.

MR. AZMAN: Can I respond to the preference analogy real briefly, please?

THE COURT: Go ahead.

MR. AZMAN: So, I believe that the scenario you

just described that you said is okay, results in the same disparity of treatment that others on this hearing are describing.

THE COURT: Go ahead.

MR. AZMAN: So, I believe that the scenario you just described, that you said is okay, results in the same disparity of treatment that others on this hearing are describing, and let me explain why. If we're engaging the settlement discussion with the preference target and they agree to assign their claim to the Trust, we will necessarily be getting less dollars in.

So, let's say a preference target is agreeing to settle their preference claim for $10 and they're not going to assign their claim to us, and that's okay with us, what if we then say, well, you know what, if you assign your claim to us, you'll only have to pay $5 to settle the preference claim because you're assigning your claim. That results in the same exact disparate treatment that we're talking about here. It's no different. The cost benefit analysis is other creditors could be directly impacted by it. There's no difference.

THE COURT: But then you are negotiating with that person's attorney most likely, not an individual, who understands what the issues are and you're making a compromise of that claim, and that's something that the trust

certainly can do. They can compromise claims. You can compromise another one. You can just forgive it because it's too expensive to pursue like you said. You can say we'll reduce it ten percent of what we think the preference is in order save the cost of having to pursue it.

Those are all things that happen in every case. But when you have this blanket notice you want to send out to say give us your third-party claims and we'll give you a ten percent bump, that's a different animal. And that's something that would have to have been disclosed at the time the plan was confirmed. It just has to be.

I mean, it can have -- you have to give creditors an opportunity to be heard on that issue and they weren't given that opportunity because I don't think it was clear in the plan that you were going to be acquiring third party claims. And it certainly was not clear in the plan that you were going to give a ten percent bumped to everybody who assigned their claim to you.

MR. AZMAN: Understood, Your Honor. I will come to our first statement that we're willing to drop the ten percent bump which I think solves all the problems. I don't think there are any remaining objections.

THE COURT: Well, it doesn't get you past the noticing issue which I have a problem with as well because, again, I come back to you're going to send out a blanket

notice to all these creditors who up till now didn't receive a notice of this motion apparently. So, you're asking me to approve it and then you're going to send out a notice and say, hey, the judge approved us to be able to come out and solicit from you to give us your third-party claims.

Who's representing those parties? Who's giving them advice about how that's going to impact them? Should I give it, should I not? They don't even know if they have a third-party claim, a lot of them. There's just so many factors here that create problems that I just can't get past from a due process perspective.

MR. AZMAN: Your Honor, we are dealing with a number of litigation targets who are not represented by council. Am I supposed to give them, in other contexts, advice about whether they should settle the preference claim or some other action? I don't see the distinction. I mean, these are claims we're requiring from them that are -- that they hold against a third-party.

I don't see why the trust has an obligation of any kind to give creditors a reason to not assign their claim. It's arm's length. We're not talking about, you know, their claim against the Trust. We're talking about their claim against a third party that we would like to acquire. You know, I can't help the fact that a number of these creditors are not going to be represented by council and I understand

your concerns about that, but that doesn't mean that the Trust isn't authorized under the documents to try to do it.

THE COURT: Ms. Sarkessian, what's your view on this idea that if I just eliminate the bump then they can send out the notice to all third-party creditor -- all creditors, excuse me, to turn over their third-party claims that that somehow comports with the notice requirements under the code and due process.

MS. SARKESSIAN: Your Honor, again, for the record, Juliet Sarkessian on behalf of the U.S. Trustee.

I do not think eliminating the ten percent bump addresses those concerns for many of the reasons that you've articulated. But, again, I think you're going to even have an additional problem which is now, you know, you have people who might be asking, well, am I going to get something for signing these claims, and if not, why would I want to do that. So, you'd still have a big disclosure issue there.

I think you'd still have, you know, again, issues about the fact that you have no idea what these claims are worth, what impact it will have on creditors whether they assign or not assign. Professional fees might be significant. They might end up getting less at the end of the day. And again, none of this was in the plan.

So, I don't think -- I think that taking way the ten percent might, you know, take care of -- it takes care of

maybe, you know, equal treatment among those creditors in Class 4 who have claims against, or, you know, have third-party claims. But as others have pointed out, there are many trade creditors, et cetera, (inaudible). So, you still have the potentially unequal treatment. I don't think it takes care of the overall problems.

THE COURT: Well, the other concern I have too, going back to you, Mr. Azman, is you're not sending notice out to people who the trustee has claims against. Maybe you do, some of them do. But some of these are just creditors of the estate. Most of them are probably creditors of the estate. And you got a fiduciary duty to them. And you're going to be sending out a notice that's going to affect their rights.

So, you would have an obligation, a fiduciary obligation, I believe, to give them a full understanding of what you're doing, why you're doing it, and how it's going to affect their rights. This isn't you negotiating with someone that you have preference action against. You're negotiating with your clients -- not clients, but your beneficiaries, the creditors of this estate. That's who you're dealing with, and don't you have an obligation to give them all this information and be able to present them with this information?

MR. AZMAN: No, Your Honor. No. We're pursuing a preference target who is --

THE COURT: I'm not talking about preference targets; I'm talking about someone who is just a creditor of the estate. I have a claim against the estate, and I got a claim against the third-party. You don't have a claim against them, they have a claim against you, against the estate.

MR. AZMAN: What if we have an objection to their claim? Do I have an obligation to explain to them why our objection fails?

THE COURT: No, but you have an obligation to give -- you're trying to affect them in a way that is different from just saying we object to your claim. We're going to object to your claim. But I'm assuming a lot of people, you're not going to object to the claim, but you may. There's going to be some that you object to, some you don't.

So, how do you distinguish those? How are you going to parse through that dilemma where you say, your going to send out a blanket notice to everybody. Some, you might say, they have a claim against the estate but you're going to give it them because you don't have any defense to it.

Trade creditors are probably not going to have much unless there's a, you know -- I don't know how many trade creditors there are for Cred Inc., but there's just so

many issues here that are fraught with problems. It's not just a blanket. I can give this blanket notice to everybody that just says assign your third-party claims to me and we're good.

I'm just really struggling with this, Mr. Azman. You're going to have to try to -- I'll give you another opportunity to try and convince me, but at this point I'm just really struggling with this idea that there's no notice issues here that have to be dealt with.

MR. AZMAN: Well, I think that the way that we can approach this is by coming up with an alternative claim acquisition strategy because the value of these claims is far too valuable to lose. It just is. And it's not just Uphold claims.

And by the way, nobody's talked about the contingency fees that will be significant in that Uphold class action. And I know that Your Honor is not talking about whether one method is better than the other. It's more about the disclosure. But there's lots of disclosures for why creditors would want to assign these claims to the trust and avoid things like double dipping of attorney fees, and a slew of other variables.

I agree with Your Honor, it's not a simple process that we're talking about in terms of evaluating whether this benefits, you know, one creditor more than another. And,

again, we acknowledge that it does benefit some creditors more than others. I just don't know which ones yet, right? I mean, it's litigation, right?

We have class council on the phone. If you ask them what's the value of your litigation -- we haven't even conducted discovery yet. They don't know. And so, I'm trying to come up with some solution that would allow the Trust to do the right thing here which is to get claims which, yes, Uphold has -- there's a class action. Those claims have a law firm that's prosecuting them, but again, that's a narrow class. It's only U.S. creditors and who are individual. There are lots of other Uphold creditors out there.

Those claims are going to go unprosecuted, and that's exactly what Uphold's councils wants who's on the line here. I think you recognize that. But we are trying to avoid that outcome. And so, you know, maybe there needs to be disclosure as part of the acquisition process but I don't know what that's going to look like. You know, are we going to provide numbers? You know, we think we're going to recover this, that's an impossibility. But I think it's fair, I guess, to at least tell creditors that there is a class action pending.

And by the way, again, it's not just about Uphold, so I don't know what disclosure we're going to give to

creditors about other third parties who we might be suing, and I wouldn't want that out there anyway because some of them, you know, we haven't commenced a law suit against yet. But if it's the Uphold class that we're concerned about, I would proceed to include some type of disclosure that says the class action exists, and that your rights may be affected, and for some reasons you may not want to assign your claim to the trust, and for those who may want to. And that, you know, here's contact information for class council if you want more information.

Again, I'm coming up with this on the fly but I really -- I can't let this go because I know how much value is going to be lost and is going to go down the drain. And it's concerning to me and it's concerning to the trustees.

THE COURT: And I certainly understand that, and I understand that there could be third-party claims out there that are valuable to all the creditors of the debtor's estate, but I just don't know what the answer is at this point.

Mr. Delaney, you raised your hand. Do you have something you want to add? I kind of devolved this into just a conversation, but that's fine.

MR. AZMAN: Sorry, Your Honor.

THE COURT: No. It's fine.

(No verbal response)

THE COURT: Your muted, Mr. Delaney.

MR. DELANEY: I apologize, Your Honor. I was double muted so I didn't accidentally talk over anybody.

I just wanted to chime-in and add onto something that Mr. Neiger mentioned earlier and in response to liquidating trustee's council. Your Honor, I think that while we believe that the plan is unambiguous and that the liquidation trust doesn't have the ability to acquire third-party clients, I think we do recognize that there could be a circumstance under which a third-party was acquired, you know, pursuant to some sort of settlement designated, noted, identified third-party claims.

I think our point is that there isn't any authority for this large scale acquisition like you saw in Woodbridge. And we don't believe that a creditor sitting on their couch reading the plan would see this provision about adjudicating third-party claims and think the liquidating Trustee is going to acquire every single third-party claim that a Class 4 creditor has and bring it against non-debtor entities as the liquidating trustee's council said is their intention. And I think that's kind of one point we wanted to raise.

And I think, you know, with respect to the value of those claims as the United States Trustee noted and, you know, as we initially raised in our argument and in our

briefs, we don't believe that any proceeds from these third-party claims could be distributed under the plan and liquidation trust agreement without modifying the plan which cannot be done at this point because the plans been substantially consummated.

Those are the two points I wanted to touch on, Your Honor.

THE COURT: Okay.

MR. DELANEY: And thank you for the time.

THE COURT: Thank you.

Ms. Sarkessian?

MS. SARKESSIAN: Yes. Thank you, Your Honor. I just wanted to respond, you know, to the discussion regarding there being valuable claims out there. It is my understanding, and I'm very late to this case, I'm substituting for Joe McMahon of our office, but I do understand, based on communications with the Trust council, that the estate does have claims against these same defendants that it will be pursuing.

So, there is, you know, an opportunity for some value there out of those claims. You know, I have no idea what the value of those claims are as opposed to third-party claims that the trust is considering acquiring, but it's not as if the Trust will not be -- it's my understanding the Trust will be bringing or potentially bringing claims against

these same defendants. And, obviously, if those are successful, they would benefit the beneficiaries of the Trust. That's the only comment I wanted to make.

Thank you.

THE COURT: Thank you.

Mr. Neiger or Ms. Geman, what about the fact that Mr. Azman raised that your class action is limited; it only covers individuals in the United States. So, it doesn't cover any corporate entities in the United States who may have claims against Uphold. It does not cover foreign individuals or companies that may have claims against Uphold. What happens to them?

MS. GEMAN: I think, Your Honor, the Rule 23 answer, and there might be a bankruptcy answer, which is where we're speaking here on behalf of our proposed absent class members, that's the population to whom we owe duties, that's the population to whom that we allege is entitled to the particular rise notice that we're, you know, advocating here.

If Your Honor is asking -- I guess I'm not sure. I mean, to clarify, the notice that we are seeking is on behalf of people who are proposed absent class members. Your Honor is correct that that would not apply to non-class members; however, the other points raised during the proceedings today apply, of course, to all the perspective

creditors here. But this specific notice that we advocate for class members is specific to that class.

I don't know if that answers Your Honor's question.

THE COURT: Well, I'm just trying to see if there's some way to fashion something that would be beneficial to everybody.

MS. GEMAN: Yes. I understand.

THE COURT: I'm kind, again, I'm devolving to -- Now I'm devolving into a mediator role instead of a judge role.

UNIDENTIFIED SPEAKER: If I may speak, Your Honor.

THE COURT: Yes. One other point to have you address is what happens if the District Court in New York denies certification of the class?

MS. GEMAN: So, if the district court denies certification of the class -- every class member's claim has been, even absent class members, has been told based on the filing of the class action. So, those individuals have not lost their right to bring individual claims if indeed a class is denied.

So, now I understand realistically that there might be a lot of reasons why somebody may not want to bring an individual claim, but the point is that the benefit of a

class action is they're not giving up their claims against Uphold by dent of being absent class members.

Now, practically speaking, you know, so the class actions will be fully briefed by May of next year. I don't know how the timing of that works vis-a-vis these claims, but that seems to be moving perhaps a little more quicky. So, that seems like a problem for another day, but the due process answer is class members, if there's no class certified, they can go on ahead and bring individual claims. And if the class is certified, they can opt out and bring individual claims, and if the class has settled, then the court will oversee all aspects of it including the fees which was a point raised by Mr. Azman and there would be a notice, consistent with plan notice language principals, that would clearly delineate, in plain English, people's options; do nothing, object, opt out, what have you. But the point is it would be clear.

MR. NEIGER: Your Honor, if I may interject?

THE COURT: Yes. Go ahead, Mr. Neiger.

MR. NEIGER: Thank you, Your Honor. I completely agree with and adopt everything that Ms. Geman said particularly because this is her area of expertise, but from a bankruptcy perspective, bankruptcy is all about disclosure. The truth shall set you free. That takes care of all the problems. It takes care of the problem of what happens if

the class does not get certified. It takes care of the problem of what had happened to both the foreign creditors.

Just tell them the truth. Give them full disclosure, as much as you possibly can. I understand you can't get down to how every assigned claim will benefit each individual, but there's a lot of room between where we are today and notice that could and should be given. And I am happy to work with Mr. Azman on formulating a notice that we deem acceptable, but full and fair disclosure in bankruptcy is the answer to every problem.

THE COURT: Mr. Delaney, are you of a view that there's some compromise to be had here that if you had discussions with Mr. Azman and Mr. Neiger, you could figure out a way to get out a notice that is appropriate under the circumstance? I don't want to put you on the spot. I mean, this is all subject to your changing your mind at any time because I'm kind of putting you on the spot here.

MR. DELANEY: Yes, Your Honor. I mean, I think that we would be willing to try to work with them. I think we do have some fundamental issues with whether or not the liquidating trust can do what it's proposing to do. We do not believe that it has the authority to do a wide scale claims acquisition of the (inaudible) that we're seeing in Woodbridge. I think the court noted that why didn't they do this through the plan confirmation process.

I don't think that a notice corrects that fundamental issue with what's been proposed by the liquidating trustee. With that said, I mean, who knows. Who knows what the liquidating trustee's council may propose or the liquidating trustee may put forward, but I will not, I mean, that doesn't seem to be a question for today on the motion that's proposed. You know, I think our comfort level was trying to hammer something out live during the

And I think that, you know, from our perspective, if the court is disinclined to approve the procedures as proposed, we believe the motion should be denied. And if the liquidating trustee wants to bring another motion with different procedures, we'll consider those and reserve our rights with respect to whether or not those solve our fundamental issues with respect to the authority of the liquating trust under the plan.

MR. AZMAN: Your Honor, to state the obvious, we'd obviously be more than happy to work with Mr. Neiger and others to come up with the appropriate disclosure hearing what Your Honor has to us to, you know, say things like you should consult with an attorney, or hear the things that you might consider in deciding whether the ten percent is worth it in assigning your claim or not, and hear our hear facts about the class action that you should be aware of. And, you

know, we think that that would be an appropriate outcome given your comments.

THE COURT: All right. Well, why don't we do that. I think everyone is pretty clear on where I stand on this. I think in terms of the authority of the Trust to acquire third-party claims, although it was not completely clear in the plan or the trust agreement, I think it was certainly implied that the Trust would seek -- could seek or could obtain assignment of third-party claims that it could then pursue on behalf of all creditors of the estate.

On the ten percent bump issue, I got a problem with that because, as I indicated, if this had been brought more clearly at the time of plan confirmation, the Class 4 creditors would have had an opportunity to understand that not only was the Trust going to be able to obtain third-party claims, but it was also going to give a benefit to those who assigned their third-party claims to the Trust. And it could have been a discussion then, it should have been done in conjunction with the disclosure statement as well so that people would have had an opportunity to understand these issues at that time.

So, I'm disinclined to say that I would allow the trustee to just give a blanket ten percent bump to anybody who assigned their claims to the trust. Now, that still leaves open the issue of individual negotiations with

individual claimants and whether or not if there's a claim objection and the trustee wants to settle it, and as a result they give some value to a third-party claim that's going to be assigned to the trust. I think that's something that can be done, but it's done on a one-off basis so it's more clear.

The notice issue is where I get hung-up the most. How do we give notice to these folks what the Trust is proposing to do? How it's going to be done. Why they're doing it. And what, if any benefits, are going to inore to the estate if it happens. And that's where I think the parties can maybe have a discussion and talk about it.

So, at this point, I think it is appropriate for me to say I'm going to deny the motion without prejudice to bring another motion with different procedures on how to proceed, and would encourage the parties to all talk. And I think Mr. Sarkessian would say you got to give notice to all creditors of the motion not just the 2002 list if you're going to bring another motion which I agree with.

MS. SARKESSIAN: Yes, Your Honor. Thank you.

THE COURT: Okay. Have I left anything out? Does that -- I have a lot --

MR. AZMAN: No. I guess my only question, which I'll just ask here in open court, I mean, Mr. Delaney presumably is not inclined to agree to anything that allows us to apply our claims even if the Uphold Plaintiffs are in

agreement. So, well I guess we'll file the motion and we'll decide and Mr. Delaney will have an opportunity (inaudible) if there's anything to discuss on that note.

THE COURT: I agree. I think that's something you can talk about it. If you can't come to an agreement, come up with what you think resolves my concerns and you can file another motion, and if Mr. Delaney still objects, we'll hear the objection, and I'll have to rule on it at that time.

MR. AZMAN: Understood. Thank you, Your Honor.

THE COURT: Okay.

MR. NEIGER: Thank you, Your Honor.

THE COURT: All right. Thank you all very much. It was kind of a strange hearing but I kind of actually like these ones where I get to just kind of talk to everybody about this stuff because I'm still trying to figure this stuff out myself too because this one threw me for a loop. I haven't seen this before, and there doesn't seem to be a lot of case law out there. Certainly nothing directly on point. And so, it was an interesting issue.

All right. Anything else before we adjourn?

MR. AZMAN: No, Your Honor. Thank you.

THE COURT: Okay. Thank you all very much. We're adjourned.

(Proceedings concluded at 4:33 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling July 20, 2022

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Mary Zajaczkowski July 20, 2022

Mary Zajaczkowski, CET-531

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